

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE APPLICATION OF POST-NEWSWEEK
STATIONS, INC., ET AL.
(WYDC, INC., ET AL.)

Related to

UNITED STATES OF AMERICA,
Plaintiff,

v.

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS,
Defendant.

09 CV 7959 (DLC)(MHD)

41 CV 1395 (DLC)(MHD)

OCT 19 2009

**APPLICATION FOR ENTRY
OF JUDGMENT AGAINST WYDC, INC., ET AL.**

Upon the accompanying Affidavit of Ray Schwind in Support of Entry of Judgment ("Schwind Aff.") and exhibits attached thereto, the American Society of Composers, Authors and Publishers ("ASCAP") respectfully applies to this Court for entry of the consent judgment entered into between WYDC, Inc. and Vision Communications, LLC (collectively "WYDC/Vision"), and ASCAP, being submitted to the Court herewith.

WYDC, Inc. is the F.C.C. licensee of television station WYDC-TV located in Corning, New York. (See Schwind Aff. ¶2). Vision Communications, LLC is the owner of WYDC-TV and the sole shareholder of WYDC, Inc. (Id.). On February 6, 2009, ASCAP and WYDC/Vision entered into a settlement agreement ("Settlement Agreement") to resolve ASCAP's claims for outstanding license fees for WYDC-TV in

ENDORSED ORDER

*Application granted. ASCAP is to
serve the proposed judgment for entry
in the amount of \$128,257.19
11/4/09 J. M. Rosen*

the amount of \$29,718.58 ("Settlement Amount"). (*See* Schwind Aff. ¶3;¹ *see also* Ex. A, Feb. 6, 2009, Settlement Agreement). Pursuant to the terms of the Settlement Agreement, WYDC/Vision agreed to execute an ASCAP Local Station Blanket Television License (the "ASCAP Blanket License") for WYDC-TV, covering the period April 1, 1998 through December 31, 2009. (*See* Schwind Aff. ¶4; Ex. B, executed ASCAP Blanket License, with only the first and signature pages attached). This Court's Order entered in *United States v. ASCAP: In the Matter of the Application of Post-Newsweek Stations, Inc., et al.*, dated November 17, 2004 (the "2004 Order"), approved of the ASCAP Blanket License and further, directed each "Bound Station" to pay license fees to ASCAP in an amount calculated by the Television Music License Committee ("TMLC") in accordance with a fee allocation formula approved by this Court. (*See* Schwind Aff. ¶4). As WYDC-TV was one of the "Bound Stations," the Settlement Agreement further memorialized WYDC/Vision's obligation to pay license fees for WYDC-TV as determined under the TMLC allocation formula. (*Id.*).

The Settlement Agreement also provided that the parties would enter into a Consent Judgment to be submitted to the Court for approval and entry should WYDC/Vision breach the terms of the Settlement Agreement or WYDC-TV's ASCAP Blanket License. (*See* Schwind Aff. ¶5; *see also* Ex. A, a copy of the executed Consent Judgment attached to the Settlement Agreement).

As set forth in the Schwind Affidavit, WYDC/Vision have failed to meet their payment obligations to ASCAP and breached the terms of both WYDC-TV's ASCAP Blanket License and the Settlement Agreement, entitling ASCAP to seek entry of the

¹ The exhibits relied upon and cited in this Application are submitted as exhibits to the accompanying Affidavit of Ray Schwind and are referred to herein as "Ex. ____."

Consent Judgment. (See Schwind Aff. ¶6-7; *see also* Exs. C-D, letters from the ASCAP account manager for WYDC-TV to William Christian, the President and General Manager of WYDC/Vision, advising him of his breach of the terms of Settlement Agreement).

Pursuant to Paragraph 6 of the Settlement Agreement, upon WYDC/Vision's default of their payment obligations, ASCAP is entitled to seek entry of the Consent Judgment for any remaining balance of the Settlement Amount owed at that time as well as other costs and fees due and owing to ASCAP under the agreement. (See Schwind Aff. ¶6; Ex. A, Settlement Agreement, at ¶6).

ASCAP therefore respectfully requests that this Court approve and enter the Consent Judgment against WYDC/Vision and in favor of ASCAP in the amount of \$28,257.19, representing the remainder of the Settlement Amount due to ASCAP plus monthly license fees for the Station for the months of March through September, 2009. (See Schwind Aff. ¶8; *see also* Ex. E summary and detailed account statement for WYDC-TV).²

Notice of this Application is being given to WYDC/Vision so that if they wish to respond to ASCAP's Application, they may do so within the next fourteen (14 days) following which ASCAP will have seven (7) days for its reply.

² Given that the amount set forth in the Consent Judgment and the amount currently due are different, ASCAP respectfully requests that the Court simply interlineate the updated amount, \$28,257.19, in place of the figure "\$29,718.58" and strike the words "or such other amount" and "may be" from Paragraph 1 of the Consent Judgment.

Dated: New York
October 14, 2009

AMERICAN SOCIETY OF COMPOSERS, AUTHORS
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